

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK**

COUNTDOWN CLOCKS INTERNATIONAL

Plaintiff,

v.

SHORTTIMERS CLOCK AND CHRISTOPHER
SHEPPARD,

Defendants.

X

ANSWER

CASE NO. 07 CIV 7283

(Rakoff, J.)

X

Defendants SHORTTIMERS CLOCK and CHRISTOPHER SHEPPARD (hereinafter collectively, “Shorttimers Clock”), by and through their attorneys, INTELLECTULAWSM. The Law Offices of P.B. Tufariello, P.C., hereby answer the Complaint of Plaintiff COUNTDOWN CLOCKS INTERNATIONAL (hereinafter “plaintiff”) as follows:

1. The allegations contained in paragraph 1 of the Complaint set forth conclusions of law for which no responsive pleading is required. To the extent that a responsive pleading is required, Shorttimers Clock Denies the allegations set forth in paragraph 1 of the Complaint.
2. Shorttimers Clock admits that this Court has subject matter jurisdiction pursuant to 28 U.S.C. § 1331 and § 1338(a) in that plaintiff’s action is an action for patent infringement under the United States Patent Act Title 35, but Denies (i) that venue in this action is necessarily appropriate in this District, as opposed to any other District, and (ii) that a substantial portion of the events giving rise to the claims of relief stated in plaintiffs’ Complaint occurred in this Judicial District.
3. The allegations contained in Paragraph 3 of the Complaint set forth conclusions of law for which no responsive pleading is required. To the extent that a responsive pleading is required, Shorttimers Clock Denies the allegations set forth in Paragraph 3.

4. Shorttimers Clock lacks knowledge or information sufficient to form a belief that plaintiff is a corporation of the State of New York with an address at 50 Rose Place, New Hyde Park, NY 11040 and, therefore, Denies the same.
5. Shorttimers Clock admits that it has an address and place of business at 2350 JB Riley Road, Burk Burnett, TX 76354 but Denies the remaining allegations set forth in Paragraph 5 of the Complaint.
6. Shorttimers Clock lacks knowledge or information sufficient to form a belief as to the truth or falsity of the allegations contained in paragraph 6, and therefore Denies the same.
7. Shorttimers Clock lacks knowledge or information sufficient to form a belief as to the truth or falsity of the allegations contained in paragraph 7, and therefore Denies the same.
8. Shorttimers Clock admits to selling the Shorttimers Clock but Denies the remaining allegations set forth in Paragraph 8 of the Complaint.
9. Denied.
10. Shorttimers Clock lacks knowledge or information sufficient to form a belief as to the truth or falsity of the allegations contained in paragraph 10, and therefore Denies the same.
11. Shorttimers Clock lacks knowledge or information sufficient to form a belief as to the truth or falsity of the allegations contained in paragraph 11, and therefore Denies the same.
12. Shorttimers Clock Denies all allegations contained in paragraph 12 of the Complaint.
13. Shorttimers Clock Denies all allegations contained in paragraph 13 of the Complaint.
14. Shorttimers Clock admits to have received communications sent to them on behalf of the plaintiff, but Denies all remaining allegations contained in paragraph 14 of the Complaint.

AFFIRMATIVE DEFENSES

Further Answering the Complaint, Shorttimers Clock pleads the following affirmative defenses:

FIRST AFFIRMATIVE DEFENSE

15. Shorttimers Clock's products do not infringe United States Letters Patent No. 5,999,492.

SECOND AFFIRMATIVE DEFENSE

16. Shorttimres Clock's products do not infringe United States Letters Patent No. 6,483,779.

THIRD AFFIRMATIVE DEFENSE

17. Shorttimers Clock is not liable for infringement of United States Letters Patent No. 5,999,492.

FOURTH AFFIRMATIVE DEFENSE

18. Shorttimers Clock is not liable for infringement of United States Letters Patent No. 6,483,779.

FIFTH AFFIRMATIVE DEFENSE

19. United States Letters Patent No. 5,999,492 is invalid and/or unenforceable.

SIXTH AFFIRMATIVE DEFENSE

20. United States Letters Patent No. 6,483,779 is invalid and/or unenforceable.

SEVEN TH AFFIRMATIVE DEFENSE

21. The Complaint fails to state a claim for relief.

EIGHTH AFFIRMATIVE DEFENSE

22. The Complaint is barred by Laches.

NINTH AFFIRMATIVE DEFENSE

23. The Complaint is barred by the applicable statutes of limitation.

TENTH AFFIRMATIVE DEFENSE

24. The Complaint is barred by the Doctrine of Waiver.

ELEVENTH AFFIRMATIVE DEFENSE

25. The Complaint is barred by the Doctrine of Estoppel.

TWELFTH AFFIRMATIVE DEFENSE

26. Plaintiff has engaged in Unclean Hands.

COUNTERCLAIMS

And for their counterclaims against Countdown Clocks International, Defendants Shorttimers Clock and Christopher Sheppard state as follows:

27. Defendants Shorttimers Clock and Christopher Sheppard (hereinafter collectively “Defendants” or “Counterclaimants”) bring the First and Second Claims for Relief of these counterclaims against Countdown Clocks International (hereinafter “plaintiff” or “Counterclaim Defendant”) to obtain a declaratory judgement of non-infringement, invalidity and unenforceability by Counterclaimants of U.S. Patent No. 5,999,492 (hereinafter “the ‘492 patent”) and of U.S. Patent No. 6,483,779 (hereinafter “the ‘779 patent”) arising under the Declaratory Judgement Act, 28 U.S.C. §§ 2201 and 2202, and the Patent Law of the United States, 35 U.S.C. § 1 *et. seq.*

The Parties

28. Shorttimers Clock LLC is a limited liability company, duly organized and existing under the laws of the State of Texas, having its headquarters and a regular and established place of business at 2350 JB Riley Road, Burkburnette, Texas 76354.
29. Christopher Sheppard is the managing member of Shorttimers Clock LLC, having a a regular and established place of business at 2350 JB Riley Road, Burkburnette, Texas 76354.
30. Upon information and belief, Counterclaim Defendant Countdown Clocks International is a corporation duly organized and existing under the laws of the state of New York with an address at 50 Rose Place, New Hyde Park, New York 11040.

Jurisdiction and Venue

31. These counterclaims are between citizens of different states and arise under the patent laws of the United States, 35 U.S.C. §§ 1 *et. seq.* This Court has jurisdiction under 28 U.S.C. §§ 1331, 1332, 1337, 1338, 1367, 2201, and 2202.
32. Venue is proper in this judicial district under 28 U.S.C. § 1391.

First Claim for Relief

Declaration of Non-Infringement

33. Counterclaimants incorporate herein by reference paragraphs 1-32.
34. An Actual Controversy exists between Counterclaimants and Counterclaim Defendant with respect to the infringement of the '492 and the '779 patents.
35. Counterclaimants Shorttimers Clock LLC and Christopher Sheppard have not individually nor collectively infringed, induced infringement of, or contributed to the infringement of the '492 and the '779 patents, under 35 U.S.C. § 271, or any subparts thereof.

Second Claim for Relief

Declaration of Invalidity

36. Counterclaimants incorporate herein by reference paragraphs 1-35.
37. An Actual Controversy exists between Counterclaimants and Counterclaim Defendant with respect to the validity, enforceability and infringement of the '492 and the '779 patents.
38. The '492 patent is invalid and unenforceable under one or more of 35 U.S.C. §§ 101, 102, 103, and 112.
39. The '779 patent is invalid and unenforceable under one or more of 35 U.S.C. §§ 101, 102, 103, and 112.

REQUEST FOR RELIEF

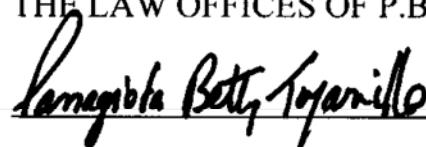
WHEREFORE, Shorttimers Clock LLC and Christopher Sheppard pray and respectfully request that this Court enter judgement in their favor as follows:

- a. ordering that Plaintiff takes nothing by its Complaint;
- b. dismissing the Complaint with prejudice;
- c. awarding Shorttimers Clock its reasonable attorneys' fees and costs under the applicable provisions of the United States Patent Act, Title 35;
- d. declaring that Shorttimers Clock LLC and Christopher Sheppard do not infringe any claim of the the '492 and the '779 patents;
- e. declaring that the claims of the '492 and the '779 patents are invalid and/or unenforceable; and
- f. awarding Shorttimers Clock LLC and Christopher Sheppard such other and further relief as the Court deems just and proper, including costs and expenses of this case.

Respectfully Submitted,

INTELLECTULAW
THE LAW OFFICES OF P.B. TUFARIELLO, P.C.

Dated: 09/06/07


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SHORTTIMERS CLOCK &
CHRISTOPHER SHEPPARD

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing ANSWER, has been served upon the Attorneys for Plaintiff COUNTDOWN CLOCKS INTERNATIONAL, Ostrolenk, Faber, Gerb & Soffen, LLP via Electronic Mail, addressed to:

Robert C. Faber, Esq.
Ostrolenk, Faber, Gerb & Soffen LLP
1180 Avenue of the Americas
New York, NY 10036
rfaber@ostrolenk.com

on Thursday, September 6, 2007.



Panagiota Betty Tufariello, Esq.